



---

Recent Constitutional Developments in Latin America

Author(s): Jesus de Galindez

Reviewed work(s):

Source: *The American Journal of Comparative Law*, Vol. 2, No. 1 (Winter, 1953), pp. 54-59

Published by: [American Society of Comparative Law](#)

Stable URL: <http://www.jstor.org/stable/837995>

Accessed: 10/05/2012 18:26

---

Your use of the JSTOR archive indicates your acceptance of the Terms & Conditions of Use, available at  
<http://www.jstor.org/page/info/about/policies/terms.jsp>

JSTOR is a not-for-profit service that helps scholars, researchers, and students discover, use, and build upon a wide range of content in a trusted digital archive. We use information technology and tools to increase productivity and facilitate new forms of scholarship. For more information about JSTOR, please contact support@jstor.org.



American Society of Comparative Law is collaborating with JSTOR to digitize, preserve and extend access to  
*The American Journal of Comparative Law*.

<http://www.jstor.org>

---

# Comments

---

## RECENT CONSTITUTIONAL DEVELOPMENTS IN LATIN AMERICA

### I

**SELF-DETERMINATION: THE NEW PUERTO RICO FORMULA**—The first Constitution of Puerto Rico was proclaimed on July 25, 1952. In the English text, the name adopted is "Commonwealth," in the Spanish text "Estado Libre Asociado" (Associated Free State).

Puerto Rico was a Spanish colony until 1898. As a result of Cuba's last war for Independence, Spain had granted autonomy to both Cuba and Puerto Rico in 1897, but it never went into effect due to military occupation by the United States. Pursuant to the Peace Treaty of Paris signed in 1898 (30 Stat. 1754, April 11, 1899), the island of Puerto Rico was ceded to the United States. The Organic Law of April 12, 1900 (Foraker Act, c. 191, 31 Stat. 77) organized the first American civil government; it was amended March 21, 1917 (Jones Act, c. 145, 39 Stat. 951) and August 5, 1947 (c. 490, 61 Stat. 770). Under the first amendment, Puerto Ricans acquired American nationality, and under the second, they were empowered to elect their own Governor, in the same manner as they had been electing their own Legislature.

Public Law No. 600 of July 3, 1950 (c. 446, 64 Stat. 319) authorized the Puerto Ricans to draft a constitution if its inhabitants so decided in a popular plebiscite or referendum. The result of the plebiscite was favorable (387,016 votes for; 119,169 against). The Popular Party which had been in power since 1948 and had had a majority since 1940, espoused the proposal and was joined by the small Statehood and Socialist parties; the Nationalist and Independence parties, both minority parties, came out against it.

The Constitutional Convention called pursuant to the 1950 Act was elected in August, 1951, and ended its work on February 6, 1952. The draft Constitution was adopted by a second popular plebiscite held on March 3, 1952 (374,646 votes in favor; 82,923 against, out of a total registered electorate of 783,491). The Constitution was then submitted to the Congress of the United States, as required by the 1950 law, and approved July 3, 1952 (Public Law 447, ch. 567) subject to exceptions. As a result of opposition, especially to two provisions, section 20 of article II was finally eliminated—this section enumerated a series of theoretical principles, such as the "right to work" which are to be found in many of the recent Latin American constitutions—and section 5 of the same article was clarified to the effect that nonsectarian public school education should not bar education in nongovernmental schools (private religious education). A proviso was further added that any future amendment or revision shall be consistent with the Federal Constitution of the United States, the Puerto Rican Federal Relations Act, defining the relations between the United States and Puerto Rico (the Foraker Act of 1900, as amended in 1917 and 1947),

Public Law No. 600 of 1950 (81st Congress), and the Resolution approving the Constitution.

This Constitution of Puerto Rico, as above stated, was proclaimed July 25, 1952. The amendments imposed by Congress, have been approved as a routine ratification in the election held in November, 1952.

The most interesting aspect of the new Constitution is the exact nature of the new political organism that has been created. Its draftsmen decided to use two different terms in the Spanish and English texts, because they found it impossible to find a Spanish term corresponding to the English "Commonwealth." They have given no explanation of what they intend by "Free Associated State" (*Estado Libre Asociado*), but Resolution No. 22 of the Constitutional Convention explaining the scope of the term "Commonwealth," states:

"Whereas, the word 'commonwealth' in contemporary English usage means a politically organized community, that is to say, a state (using the word in the generic sense) in which political power resides ultimately in the people, hence a free state, but one which at the same time is linked to a broader political system in a federal or other type of association and therefore does not have an independent and separate existence;

"Whereas, the single word 'commonwealth', as currently used, clearly defines the status of the body politic created under the terms of the compact existing between the people of Puerto Rico and the United States, i.e., that of a state which is free of superior authority in the management of its own local affairs but which is linked to the United States of America and hence is a part of its political system in a manner compatible with its federal structure;" . . .

In short, it may be said that Puerto Rico enjoys full internal autonomy to elects its officials and to govern its own life, but is subject to the Federal Government of the United States in all matters relating to international affairs; and on the other hand, it has no power whatsoever to participate in the Federal Government of the Union. It has passed from colonial status to an intermediate status, being neither a state of the Union nor an independent republic. This form is reminiscent of the British Dominions in their earlier phase and of the Commonwealth of the Philippines before it became an independent Republic.

Only the future and the working out in practice of this formula will determine its contours; it is a flexible form which permits diverse evolution.

As to the internal life of Puerto Rico, the Constitution establishes a Government based on the popular will and organized under the traditional three Powers: a Governor elected for a four-year term, assisted by a cabinet of various secretaries; a bicameral Congress, in which minority representation is guaranteed; and a Judicial Power, with an insular Supreme Court of Justice. There is an enumeration at the beginning of the Constitution of the Bill of Rights, similar to that in other modern Latin-American constitutions and not unduly lengthy. The flag, the hymn, and the coat of arms which have been in use up to the present time as general symbols have been declared official by supplementary resolutions of the Legislative Assembly.

The federal relations between Puerto Rico and the United States have

undergone no changes; they are still governed by the Organic Law. Puerto Rico continues as a territory of the United States, not integrated as a state; the inhabitants are American citizens, but have no vote in presidential elections nor do they send senators or representatives to the federal Congress; they are subject to the Army draft. On the other hand, they are exempt from federal taxation and pay only the taxes levied by the Insular Government; there is free trade between Puerto Rico and the continental United States, but the Federal Government reserves the right to fix import quotas on certain insular products (imports of refined sugar at the present time are limited), and the coastwise restrictions on shipping are applicable; the same customs tariff is in force as in the United States, but the proceeds of duties accrue to the Insular Government; and immigration is subject to federal law and authorities (see 48 U. S. C. A., sec. 731 *et seq.*).

The two principal differences between the new Commonwealth and independent republics is that it lacks all international and military power; these fields are vested exclusively in the Federal Government; neither does it have its own national currency. Puerto Rico is represented in Washington by a Resident Commissioner elected every four years; he has a seat in the House of Representatives, but no vote, and participates only in debates involving insular affairs.

The new formula was proposed and defended by the party in power, the Popular Party, whose chief leader is the Governor, Luis Muñoz Marín; he has triumphed in all elections held since 1940. Opposed to the formula are the Independence Party, which advocates full, immediate independence to be achieved by peaceful means, and the Nationalist Party which on more than one occasion has resorted to violence. The Statehood Party, with only slight backing, advocates the admission of Puerto Rico as a new state in the Union.

The dynamic role of this Constitution and especially some aspects passed over in silence in it such as the federal relations with the United States and some possible activity in the international sphere will in the course of time clarify the nature and scope of this new formula of self-determination. Its flexibility may well permit an evolution not unlike that which some years ago took place in the British Dominions.

## II

URUGUAY: NEW SYSTEM OF EXECUTIVE POWER VESTED IN A COUNCIL—On March 1, 1952, the first Government Council in America to exercise the full executive functions in council or "collegiate" form took office.

It is the second attempt in Uruguay of this character. Its purpose is to avoid the dictatorial excesses which in many Latin-American countries have ensued from following the presidential formula of the United States.

During the 20th century, Uruguay has been blessed by a peaceful democratic order which is in marked contrast with the constant agitation in many other Latin American countries. In the 19th century, however, it likewise suffered from a succession of civil wars between the two traditional parties,

the liberal "*Colorados*" and the conservative "*Blancos*." In 1911, after his reelection as President, José Batlle Ordoñez proposed amendment of the Constitution to establish a mixed system under which the President of the Republic would share his duties with a National Council in which both major parties would be represented (six seats for the majority party, 3 for the minority). The proposal was inspired by the Federal Executive Council of Switzerland.

The proposed system met at first with strong opposition, but it was finally approved in the 1919 Constitution. It lasted only a short time; President Terra abolished it in 1933, and the new Constitution of 1934 reverted to the traditional presidential system. Soon after his accession to the presidency, after the election of 1951, Martínez Trueba (a disciple of Batlle Ordoñez) again proposed the Executive Council system. Pursuant to the constitutional requirements for amendment, the amendment was passed by a  $\frac{2}{3}$  majority of the Uruguayan Congress and ratified at a plebiscite at which 232,076 votes were cast in favor, and 197,684 against it. The two leading parties had campaigned officially in favor of the amendment, with some dissident factions in each; the minority parties (fundamentally the Socialist and the Christian Democratic parties) were in the opposition, as also some important factions of the Liberal "*Colorado*" party. In the capital, Montevideo, the opposition had a majority.

The principal characteristic of the new system is the complete elimination of the office of President of the Republic, and its replacement by a National Government Council composed of 6 members of the majority party and 3 members of the strongest minority party. In this distribution of offices, further, there is a possibility by means of the system of cumulative voting under the electoral laws, for different factions of each party to be represented; each party may present different slates of candidates, the votes being accumulated later.

The representative functions previously exercised by the President of the Republic will hereafter be exercised successively for one year by the councillors of the majority party who have occupied the first posts in the winning slate of candidates. Exception is made in the case of Martínez Trueba himself, who will exercise these representative functions until the expiration of the term of four years for which he was elected prior to the effectiveness of the amendment.

The Council will meet at stated periods and may be called into special session by the President or upon request of any two members. Its duties are exactly those which were previously vested in the President. Auxiliary to it are the various Ministers or Secretaries, who now become mere administrative heads of the various government departments. The *Intendentes* or provincial Governors are in the same manner replaced by departmental collegiate councils.

The first National Governmental Council was organized on March 1, 1952. It is composed of five members of the "*Batllista*" faction of the liberal "*Colorado*" party (the former president, Martínez Trueba, being one of these five), one member of the "*Blanco Acevedista*" faction of that party, and three members of the "*Nacional Herrerista*" faction of the conservative "*Blanco*" party.

Time will tell whether this experiment of a council system will become ac-

climatized or not in a small and exemplary country like Uruguay. If it is successful, it may well make new paths for the constitutional law of Latin American countries where the presidential system, so successful in the United States, has merely left the door wide open for personal dictatorships with their suite of revolutions and civil wars.

### III

CUBAN CONSTITUTION REPLACED BY A PROVISIONAL STATUTE—On March 10, 1952, a military coup overthrew the Government. It was led by General Batista, ex-President and a candidate for the presidency at the forthcoming elections to be held June 1st. The President Prio Socarrás, after taking asylum in the Mexican Embassy, had to flee the country, and the 1940 Constitution was replaced by a provisional Constitutional Statute, which was promulgated on April 4 by the new *de facto* Government.

In general, the new Constitutional Statute incorporates the provisions of the Constitution it supplanted, although the provisions are somewhat reduced in number.

The principal change consists in the elimination of the Congress, which is replaced by the cabinet or Council of Ministers, and the creation of a Consultory Commission.

The President is appointed by the Council of Ministers, instead of being elected by popular vote; since the President is the one who appoints the Ministers, this provision merely serves to mask a *de facto* situation. The Council of Ministers is vested with all the legislative powers which were, pursuant to the Constitution, inherent in the Congress; the Congress itself in the transitional final provisions being declared dissolved. The members of the Consultory Commission are also appointed by the President of the Republic and "are to be selected from among outstanding representatives of the fundamental activities of national life;" it has no powers of decision, but it is to be heard in all cases specified in article 138 and may make proposals for new legislation to the Council of Ministers.

There are some minor amendments to the provisions relating to the suspension of the Bill of Rights; the new Government had *de facto* already suspended them.

Article 254 calls for general elections to be held on the third Sunday of November, 1953. On this date a reform of the 1940 Constitution will be submitted to a popular referendum. If the reform be rejected, this 1940 Constitution will again be in full force and effect as of the date the newly elected President takes office. Immediate amendments to the Electoral Code are also announced; meanwhile all rights heretofore enjoyed by political organizations are declared extinguished, that is to say, all political parties are dissolved.

The Constitutional Statute itself can be amended by a nominal  $\frac{2}{3}$  majority vote of the members of the Council of Ministers, the very body which promulgated it.

Up to the present time, General Batista continues as acting Provisional Presi-

dent, assisted by a Council of Ministers composed of civilians. The leaders of the two majority parties, the Authentic Party which was in power, and the Orthodox Party which seemed about to win in the elections that were to be held, continue strongly opposed to the new *de facto* Government and have refused to collaborate in the new institutions. The Consultory Council was appointed on the basis of personalities selected from all spheres of professional life.

Cuba, therefore, is subject to a *de facto* dictatorship, which has clothed itself in a provisional mantle and which promises to hold elections next year. So far however, it has not assumed the drastic character customary in other Latin-American dictatorships.

JESUS DE GALINDEZ\*

### THE NEW CONSTITUTION OF POLAND

Poland's constitutional history is one of the most interesting in Europe; usually, the constitutional law institutions of Poland preceded those introduced later on in other continental countries. Generally, it is little known that as early as 1505 the Polish constitution "Nihil Novi" firmly established the parliamentary form of government, developed by custom in the preceding century. At the same time, other European countries, England excepted, entered the path of absolutism.

Poland was also the first country to enact a modern constitution on the continent: its basic law of May 3rd, 1791,<sup>1</sup> was a few months older than the French revolutionary constitution of the same year. It was, however, in force only a short time, as Poland was partitioned by Austria, Prussia, and Russia and recovered her independence only after World War I. A new constitution was enacted in 1921; this was in effect until 1935 when it was replaced by the last prewar Polish constitution.

All these constitutions were the products of Polish political thought, following the country's traditions, adapted to its needs, and taking into account the particular requirements of their times. The same observations do not apply to the new constitution of July 22, 1952,<sup>2</sup> as is quite understandable in view of the present predicament of the country. The new basic law of Poland patterns itself on that of Soviet Russia, lacks originality, and embodies communist principles which to a greater or lesser extent were imposed upon the country even before its enactment. However, it is not a mere copy of the Soviet constitution, although the general plan is similar and, out of 91 articles, 50 contain clauses more or less strictly translated from the basic law of the U.S.S.R. It

\* Lecturer, Columbia University.

<sup>1</sup> This date became a Polish national holiday which has been celebrated ever since; it is not recognized, however, by the present regime of the country.

<sup>2</sup> For the Polish text of the constitution, see *Konstytucja Polskiej Rzeczypospolitej Ludowej*, Biblioteka Nowej Wsi, 7.26.1952. For the English text, see the Draft Constitution of the Polish People's Republic, Polish Embassy in Washington, April 1952; a few completely insignificant changes relating to the phraseology of some articles in the draft have been made in the final text.